

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**August 20, 2013**

**The Rhode Island Ethics Commission held its 9th meeting of 2013 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, August 20, 2013, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair Frederick K. Butler**

**Deborah M. Cerullo SSND, Vice Chair Edward A. Magro**

**John D. Lynch, Jr., Secretary Robert A. Salk \***

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Peter J. Mancini and Gary V. Petrarca.**

**At 9:00 a.m. the Chair opened the meeting. The first order of business was the approval of minutes of the Open Session held on**

**July 23, 2013. Commissioner Cerullo requested that the minutes be amended by adding the words “to conclude” to the 11th line of text on page 5 after “unreasonable.” Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was**

**VOTED: To approve minutes of the Open Session held on July 23, 2013, as amended.**

**AYES: Frederick K. Butler; Edward A. Magro; Deborah M. Cerullo; Ross Cheit.**

**ABSTENTIONS: John D. Lynch, Jr.**

**\*Commissioner Salk arrived at 9:02 a.m.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:**

**David V. Igliazzi, Esq., an Assistant City Solicitor for the City of Providence serving as legal counsel to the Providence School Board, requesting an advisory opinion regarding whether he and other members of his law firm, Igliazzi & Reis, LLP, may represent private**

**clients before the Providence City Council, Zoning Board, Planning Board, Probate Court, Municipal Court, Board of Tax Appeal, or any other City board, court, commission or entity.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to David V. Igliazzi, Esq., an Assistant City Solicitor for the City of Providence.**

**The next advisory opinion was that of:**

**Henry F. Winthrop, a member of the Newport City Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in City Council matters involving the Newport Yacht Club, given that his sister and brother-in-law are members of the Newport Yacht Club.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Henry F.**

**Winthrop, a member of the Newport City Council.**

**The next advisory opinion was that of:**

**Naomi Neville, a member of the Newport City Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from participating in City Council matters involving the Newport Yacht Club, given that her husband is an individual member of the Newport Yacht Club.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. In response to Commissioner Salk, Staff Attorney Stewart stated that the Code would not necessarily prohibit a City Council member, who was also a member of the Yacht Club, from participating in Council matters involving the Yacht Club if that person did not hold a position in which they could affect the financial interests of the Yacht Club. Upon motion made by Commissioner Butler and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Naomi Neville, a member of the Newport City Council.**

**The next advisory opinion was that of:**

**Patrick M. Tigue, a former Principal Policy Associate for the Rhode**

**Island Office of the Health Insurance Commissioner (“OHIC”), requesting an advisory opinion regarding whether the Code of Ethics places any restrictions upon his private employment with Neighborhood Health Plan of Rhode Island (“Neighborhood”).**

**Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Gramitt stated that the draft should be amended on page 2 in the third paragraph because the Petitioner’s job title at Neighborhood is “Product Manager” not “Project Manager.”**

**In response to Chair Cheit, the Petitioner stated that he has since accepted the position and began working at Neighborhood last week. He stated, however, that he has not had any interaction with the state in his new position. Staff Attorney Gramitt stated that the Code of Ethics did not prevent the Petitioner from accepting the position at Neighborhood but, as outlined in the advisory opinion, may place some limitations on his future interactions with the state.**

**The Petitioner stated that his former employer, OHIC, is the agency where insurance rates are set. He informed that he will not work on the rate setting process at Neighborhood for one year following his severance from state service. He noted that the Health Benefits Exchange works with the insurance companies regarding the insurance product, which is where his work will be focused. He stated that Neighborhood’s rates for 2014 have already been**

approved by OHIC. He added that he will have no interaction with OHIC during Neighborhood's next rate setting process which usually begins in April. He stated that he understood his perpetual obligation not to disclose confidential information that he gained while working for OHIC. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To issue an advisory opinion, as amended and attached hereto, to Patrick M. Tigue, a former Principal Policy Associate for the Rhode Island Office of the Health Insurance Commissioner.

The next advisory opinion was that of:

Sean J. McGarry, a member of the New Shoreham Town Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits his participation and vote on the Town Manager's employment contract, given that the Town Manager oversees the performance of contracts between the Town and the Petitioner in his private capacity.

Staff Attorney DiLibero presented the Commission Staff recommendation. The Petitioner was present. Commissioner Cerullo stated that she agreed with the Staff's analysis that there was no business associate relationship here but, nevertheless, expressed concern that there was an appearance of impropriety. The Petitioner stated that the Council has five (5) members and without his vote the

**Council is evenly split. Staff Attorney DiLibero noted that the Petitioner's prior inclination was to recuse but given the split vote he felt that it was his duty to seek this advisory opinion.**

**In response to Commissioner Cerullo, the Petitioner stated that he could exercise independent judgment in this matter notwithstanding his private work with the Town Manager. He stated that his business only operates on Block Island, providing waste collection and hauling services to commercial and residential clients, as well as the Town. He stated that his company has had this contract with the Town since 1998 and it has been under the supervision of two (2) different Town Managers. He stated that the current Town Manager's last performance review of the contract was positive.**

**After discussion it was concluded that the hardship exception would not be implicated if this advisory opinion was not approved. Chair Cheit stated that the fifteen (15) year history of this contract cuts against the appearance of impropriety, as well as the fact that the Petitioner's work was evaluated by two (2) different Town Managers. Commissioner Butler stated that the contract was awarded through an open and public process, which also negates some appearance issues. Commissioner Lynch expressed some appearance concerns and stated that he hoped the Petitioner would act in the best interests of the Town. Commissioner Cerullo stated that although she had concerns about appearance issues she was satisfied by the Petitioner's statement that he can consider this matter with**

**independent judgment. Upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Sean J. McGarry, a member of the New Shoreham Town Council.**

**The next order of business was a staff update regarding Advisory Opinion 2013-22, issued to Brian K. Barros, MSW, LCSW on July 23, 2013. Staff Attorney Gramitt recalled that Mr. Barros, a probation officer with the Department of Corrections (“DOC”), sought advice from the Commission regarding whether he could work in his private capacity as a counselor at Bridgemark, a counseling center with many clients who are on probation or parole. Mr. Barros would counsel people who were not in his DOC caseload but may encounter other probationers or parolees. At the last meeting, the Commission raised a new question, not previously addressed by similar past advisory opinions, regarding whether Mr. Barros’ clinical obligations as a social worker would interfere with his duties as a probation officer, or expectations of the DOC, to report knowledge of probation violations. The draft was amended to reflect this concern and the Commission directed staff to follow up with DOC.**

**Staff Attorney Gramitt informed that he contacted Patricia Coyne-Fague, the Assistant Director of the DOC, who consulted with DOC Director A.T. Wall and did some research before getting back to him with a response. Ms. Coyne-Fague advised that there was no**

requirement for off duty probation officers to report potential probation violations of which they may be aware. She stated that there is a requirement to report misconduct of those persons in custody, which would not apply to the instant matter. Staff Attorney Gramitt stated that the DOC administration is aware of other probation officers who provide counseling services in their private capacities and there is no expectation that those persons will report potential violations that they learn about during counseling sessions. He suggested that, going forward, similarly situated petitioners will be asked to make an affirmative representation that no such duty or expectation exists. Chair Cheit thanked the Staff for its timely report and commended the DOC for its responsiveness to the Commission.

The next order of business was a staff update regarding Commission meeting agendas and compliance with the Open Meetings Act (“OMA”). Senior Staff Attorney D’Arezzo stated that this matter was continued from the July 23, 2013, meeting. She informed that it was in response to an OMA finding recently issued by the Attorney General’s office to the Board of Elections regarding its agenda. She also discussed an April 2013 Rhode Island Supreme Court Decision, *Anolik v. Zoning Bd. of Review of the City of Newport*, 64 A.3d 1171 (R.I. 2013). She summarized the holdings of each decision and the errors made by the respective boards in not providing sufficient notice to the public in their agendas.

Senior Staff Attorney D’Arezzo explained how the Commission Staff

**complies with OMA requirements when preparing Commission agendas:**

**1. Staff Attorneys receive notification from the Rhode Island Supreme Court Clerk's office as new decisions are issued and review those decisions that are relevant to the Ethics Commission;**

**2. All Staff Attorneys receive training in OMA and the Access to Public Records Act from the Attorney General and have attended prior Open Government Summits; and**

**3. Staff Attorneys monitor and research the Attorney General's OMA findings and decisions for application to Commission agendas and meetings.**

**She further explained that the Staff modified the agenda description of legislative updates after the issuance of Anolik in the spring. She stated that legislative updates are now listed with greater specificity, naming each bill to be discussed and including a description of the bill. She stated that the Staff will continue to review court and Attorney General decisions and findings regarding OMA to ensure compliance. She added that the Staff always errs on the side of clarity and disclosure when drafting agendas.**

**Chair Cheit stated that he was confident that the Staff was complying with OMA. He noted that the public should be aware of how**

**responsive and transparent the Commission is and considers the agendas to be very informative.**

**The next order of business was the Director's Report. Executive Director Willever reported that there was one (1) complaint, one (1) advisory opinion and one (1) litigation matter pending. He stated that there have been nine (9) APRA requests since the last meeting, seven (7) of which were granted and completed in the same day. He added that two (2) of the APRA requests were granted in part and denied in part, with the denials relating to requests for executive session minutes and other investigative records.**

**At 10:05 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**a.) Motion to approve minutes of Executive Session held on July 23, 2013, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**b.) In re: Tina Jackson, Complaint No. 2013-4, pursuant to R.I. Gen. Laws § 42- 46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 10:52 a.m.**

**The next order of business was a motion to seal the minutes of the August 20, 2013, Executive Session. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To seal the minutes of the August 20, 2013, Executive Session.**

**Chair Cheit reported that the Commission took the following actions in Executive Session:**

**1. Unanimously voted to find that there was probable cause to believe that the Respondent violated the Code of Ethics in the matter of In re: Tina Jackson, Complaint No. 2013-4.**

**[Reporter's Note – The Commission also voted to approve the minutes of the Executive Session held on July 23, 2013. The vote was as follows:**

**AYES: Edward A. Magro; Deborah M. Cerullo; Ross Cheit.**

**ABSTENTIONS: John D. Lynch, Jr.; Robert A. Salk.**

**(Frederick K. Butler stepped out at the beginning of executive session and was not present to approve the minutes.)]**

**The next order of business was New Business. There being none, at 10:54 a.m. upon motion made by Commissioner Butler and duly**

**seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**John D. Lynch, Jr.**

**Secretary**